

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 24 April 2018

Public Authority: Torrridge District Council
Address: Riverbank House
Bideford
Devon
EX39 2QG

Decision (including any steps ordered)

1. The complainant has requested "a decision letter" in a permitted development application matter. Torrridge District Council ("the Council") says it does not hold the said letter.
2. The Commissioner's decision is that Torrridge District Council holds the requested information and it should provide it to the complainant or issue a refusal notice pursuant to Regulation 14 of the EIR.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To provide the complainant with the requested information or issue a refusal notice pursuant to Regulation 14 of the EIR.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 September 2016, the complainant wrote to Torrridge District Council (the Council) and requested information in the following terms:

- A copy of the decision letter refusing a permitted development application which the case officer previously referred to in an email to the Head of Planning dated 15th September 2016.
6. On 26 October 2016, the Council responded. It denied holding the requested information on the basis that there was no decision notice as the applicant withdrew the application before the decision was issued.
 7. Following an internal review the Council wrote to the complainant on 23 December 2016. It stated that;

"With regard to the decision notice on 1/0619/2016/AGMB as you rightly say in your email of the 30 September the refusal was issued but having looked into this I have established that this was due to a clerical error and that prior to the issuing of the refusal notice a withdrawal had been received by the Council. As soon as this had been realised the clerical error was corrected and therefore no valid decision exists (and the requested document was reclassified as a draft document as it does not represent the authorities (sic) final position in the determination of the application) as the application had been withdrawn by the applicant".

Scope of the case

8. The complainant contacted the Commissioner on 16 June 2017 to complain about the way his request for information had been handled.
9. The Commissioner considers that she has to determine whether the public authority holds the requested information.

Reasons for decision

10. Information is 'environmental information' if it meets the definition set out in regulation 2 of the EIR. If the information satisfies the definition in regulation 2 it must be considered for disclosure under the terms of the EIR rather than the FOIA.
11. 'Environmental information' has the same meaning as in Article 2(1) of the Directive, namely any information in written, visual, aural, electronic or any other material form on -
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

12. Noting that the nature of the information sought by the complainant relates to planning matters (converting non-residential property into residential property) the Commissioner is satisfied that the requested information was a request for environmental information as defined in the EIR by operation of regulation 2(1)(c) as laid out above. As a planning application it is a measure (a plan) likely to affect the elements of the environment by factors such as noise and energy usage.
13. The Commissioner next considered whether the Council has complied with regulation 5(1) of the EIR which states that a public authority that holds environmental information shall make it available on request.
14. When a complainant complains that a public authority has not accounted for all the requested information it holds, the Commissioner will decide whether this is the case on the balance of probabilities. She will reach the decision based on the adequacy of the public authority's explanation why the information is not held.
15. As stated above, the Council maintains that a refusal (of the planning application) was issued but this was due to a clerical error and that prior to the issuing of the refusal notice a withdrawal had been received by the Council. As soon as this had been realised the clerical error was corrected and therefore no valid decision exists (and the requested document was reclassified as a draft document as it does not represent the authorities final position in the determination of the application) as the application had been withdrawn by the applicant.
16. The Council further stated that the complainant is not the planning applicant nor the agent in this matter. It explained that the planning applicant does not even hold a copy of this document as he was advised of the clerical error and agreed that the copy sent to him would be deleted as it was not a valid decision.
17. The Commissioner is satisfied that the complainant's request for information was wide enough in scope to include the "decision letter" refusing a permitted development application which the Council say was rescinded due to the pertinent permitted development application being withdrawn. The information sought was in existence at the time of the

request (a copy was provided to the Commissioner during the investigation) and this is not ameliorated by the Council re-classifying or re-naming the said information. In any event read objectively, regardless as to the change in circumstances, the Commissioner is of the view that this is the communication that the complainant was seeking.

18. The Commissioner's decision is therefore that the Council should provide the requested information or issue a refusal notice pursuant to regulation 14 of the EIR.
19. Regulation 9(1) of the EIR states:

"A public authority shall provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to applicants and prospective applicants."
20. In order to assist the complainant in understanding the status of the information being provided that is the explanation in para 7 should have been provided as part of advice and assistance duty, in addition to confirming that the information is held.

Other Matters

21. The Commissioner attempted to informally resolve this matter and thus dispense with the need for a Decision Notice. This included discussing with the Council whether an exception would prevent releasing requested information it held. The Commissioner's initial optimism, for an informal resolution, ultimately proved to be un-founded and delayed the issuing of this Decision Notice.

Right of appeal

22. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 123 4504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

23. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

[Name of signatory]

[Job title of signatory]

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF